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1/12

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,299	01/10/2001	David Clarke Pollock	HEM 99/607 (A-2911)	9699

7590 12/18/2002

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EXAMINER

PRONE, JASON D

ART UNIT	PAPER NUMBER
3724	

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/758,299	POLLOCK ET AL.	
	Examiner Jason Prone	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 October 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,5,7-11 and 22-25 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,5,7-11 and 22-25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 03 October 2002 is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 5, 7-11, and 22-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 10 on lines 11-12 and 13-14, respectively, the phrase "...subframe having a position controlling a position of said cylinders..." is unclear. It is uncertain how a position controls another position.

3. The term "further drive" in claims 1, 10, and 22 is a relative term which renders the claim indefinite. The term "further drive" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. In this case, the term further is indefinite due to the fact it causes the misconception that this drive is further away from the first drive.

4. Claims 5 and 11 recites the limitation "said second drive" both on line 3 . There is insufficient antecedent basis for this limitation in the claim.

5. Claim 9 recites the limitation "the group" on line 2. There is insufficient antecedent basis for this limitation in the claim.

In claim 11 line 1, the phrase "...wherein said drive..." is unclear. It is uncertain if "said drive" refers to the one drive or the further drive.

6. Claims 23 and 24 recite the limitation "the position" both on line 4. There is insufficient antecedent basis for this limitation in the claim.

In claim 25 lines 5-6, the phrase "...at least one turn around..." is unclear. It is uncertain how far or long one turn is.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 5, 7-11, and 22-25 are rejected, as best understood, under 35 U.S.C. 103(a) as being unpatentable over Spengler in view of Shore et al. and Barwise et al. Morton et al. discloses the invention including a frame (Fig. 2), a pair of cylinders disposed opposite one another with a gap in-between (Fig. 2), that the pair of cylinders includes a first cutting cylinder (3) having a periphery (Fig. 7) with a cutting knife (9) and a second cylinder (4), a one drive rotating the first cutting cylinder (Abstract), a sub-frame (32) having a pivot point (29), that the sub-frame supports the cylinders, the one drive/first drive, and a second drive (Fig. 3), a further drive (45) connected to the sub-frame for pivoting the sub-frame about the pivot point (Fig. 3), a control unit connected to and controlling the further drive and the one drive for controlling a rotational speed of the first cutting cylinder (Column 5 lines 40-52), a second drive rotates and mounts the second cylinder (Abstract), that the first and second drives are motors (6), and that the

first and second drives are gears (7), that a component of travel of a point of contact between the cylinders in a direction of travel of the work piece matches a speed of the work piece for cutting in a straight line (Fig. 3) but fails to disclose that the cutting knife is helically about or at least one turn around the periphery of the first cutting cylinder, a position sensor, connected to the control unit, providing control signals to the control unit for controlling operation of the cylinders, that the sensors detect an unacceptable cut, and that the control unit is a microprocessor. Barwise et al. teaches a cutting knife that is helically about or at least one turn around the periphery of the first cutting cylinder (11). Therefore, it would have been obvious to one skilled in the art, at the time of the invention to have provided Spengler with a helical blade for a more precise continuous cut.

Shore et al. teaches a position sensor , connected to the control unit, providing control signals to the control unit for controlling operation of the cylinders, that the sensors detect an unacceptable cut, and that the control unit is a microprocessor (Column 1 lines 15-26). Therefore, it would have been obvious to one skilled in the art, at the time of the invention to have replaced the user input control unit of Spengler with the position sensors and control unit as taught by Shore et al. in order to provide Spengler with a more accurate and faster control of the cutting conditions.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Campbell, Newman, Ashton et al., Morton et al., Bruner, Talbot, Cyphers, Slyvakov, Schmalz, and Baron et al.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 703-605-4287. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allen N. Shoap can be reached on 703-308-1082. In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

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Art Unit: 3724

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JP  
December 12, 2002

*allen*  
Allen N. Shoap  
Supervisory Patent Examiner  
Group 3700